

Message Text

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45

ACTION EUR-25

INFO OCT-01 ISO-00 EURE-00 IO-14 CAB-09 CIAE-00 COME-00

DODE-00 EB-11 INR-10 NSAE-00 RSC-01 FAA-00 OIC-04

DOT-00 PM-07 H-03 L-03 NSC-10 PA-04 PRS-01 SPC-03

SS-20 USIA-15 ACDA-19 SAJ-01 OMB-01 TRSE-00 DRC-01

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P R 041607Z DEC 73

FM USMISSION BERLIN

TO AMEMBASSY BONN PRIORITY

SECSTATE WASHDC PRIORITY 2695

INFO AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION UN

USMISSION NATO

AMCONSUL MONTREAL

C O N F I D E N T I A L BERLIN 2058

E.O. 11652: GDS

TAGS: ETRN, PFOR, PGOV, GE, GW, UN

SUBJECT: ALLIED DISCLAIMER ON GDR ADMISSION TO ICAO

REF: A) BONN 17311; B) STATE 37323; C) BERLIN 350;

D) BONN 2812

1. WE CONCUR WITH EMBASSY VIEW, REF A, THAT, IN VIEW OF SENSITIVE ISSUES INVOLVED, ALLIES SHOULD ISSUE FAIRLY DETAILED DISCLAIMER, INCLUDING REFERENCES TO AIR CORRIDORS AND OTHER MANIFESTATIONS OF SPECIAL BERLIN AIR REGIME, WHEN GDR ENTERS ICAO. IF GDR MEMBERSHIP IS TO BE EFFECTED UNDER ARTICLE 92 OF CHICAGO CONVENTION, RATHER THAN ARTICLE 93, WE SUGGEST THAT DISCLAIMER DEVELOPED. LAST WINTER (REFS B, C, AND D) BE MODIFIED AS FOLLOWS:
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BEGIN TEXT: MY GOVERNMENT WELCOMES THE ACCESSION

OF THE GERMAN DEMOCRATIC REPUBLIC TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION AND IN THIS CONNECTION WISHES TO STATE THAT, AS THE CONTRACTING STATES WILL BE AWARE, FRANCE, THE UNITED KINGDOM, AND THE UNITED STATES HAVE SPECIAL RIGHTS AND RESPONSIBILITIES RELATING TO AIR ACCESS TO BERLIN. THESE RIGHTS AND RESPONSIBILITIES ARE REFLECTED IN QUADRIPARTITE AGREEMENTS, DECISIONS, AND PRACTICES DATING BACK TO THE WARTIME AND POST-WAR PERIOD AND CONCERNING SUCH MATTERS AS THE CORRIDORS WHICH TRAVERSE THE GERMAN DEMOCRATIC REPUBLIC BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE BERLIN CONTROL ZONE, THE BERLIN CONTROL ZONE ITSELF, AND THE REGULATION OF AIR TRAFFIC WITHIN THE CORRIDORS AND THE CONTROL ZONE. AS INDICATED BY THE TEXTS OF THE QUADRIPARTITE AGREEMENT SIGNED ON SEPTEMBER 3, 1971 AND THE QUADRIPARTITE DECLARATION OF NOVEMBER 9, 1972, THEY WILL CONTINUE UNAFFECTED IN THE FUTURE. END TEXT.

2. WE RAISE FOR CONSIDERATION BY EMBASSY AND DEPARTMENT, HOWEVER, QUESTION AS TO WHETHER GDR MIGHT NOT BE OBLIGATED TO APPLY FOR MEMBERSHIP UNDER ARTICLE 93 DESPITE ITS MEMBERSHIP IN UN. ARTICLE 92 PROVIDES RIGHT OF AUTOMATIC MEMBERSHIP TO "MEMBERS OF THE UNITED NATIONS AND STATES ASSOCIATED WITH THEM, AND STATES WHICH REMAINED NEUTRAL DURING THE PRESENT WORLD CONFLICT." INASMUCH AS CHICAGO CONVENTION OF 1944 PREDATES SAN FRANCISCO CONFERENCE AND PROMULGATION OF UN CHARTER. "UNITED NATIONS" IS USED IN ITS WARTIME SENSE. THIS IS MADE CLEAR BY REFERENCE IN ARTICLE 93 TO "ANY GENERAL INTERNATIONAL ORGANIZATION SET UP BY THE NATIONS OF THE WORLD TO PRESERVE PEACE." AT SAME TIME, GDR APPLICATION UNDER ARTICLE 93 NEED NOT NECESSARILY INVOLVE STIGMA OF "ENEMY STATE," SINCE FINAL CLAUSE OF ARTICLE 93, WHICH SPEAKS OF ASSENT OF STATE "INVADED OR ATTACKED DURING THE PRESENT WAR BY THE STATE SEEKING ADMISSION," DOES NOT NECESSARILY APPLY TO EVERY APPLICATION UNDER ARTICLE 93. IF STATES WHICH CAME INTO EXISTENCE AFTER 1945 HAVE APPLIED FOR MEMBERSHIP IN ICAO UNDER ARTICLE 93, WE WOULD ASSUME GDR WOULD LIKEWISE HAVE TO FOLLOW THIS PROCEDURE, AND IT SHOULD PROVE POSSIBLE TO FINESSE

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QUESTION OF WHETHER GDR COULD BE "BLACKBALLED" BY SINGLE MEMBER AS SUCCESSOR STATE TO NAZI GERMANY. PERHAPS EMBASSY AND L/T CAN SHED LIGHT ON PROCEDURES USED RESPECTIVELY BY FRG AND OTHER STATES WHICH CAME INTO EXISTENCE AFTER 1945. IF GDR USES ARTICLE 93, DISCLAIMER DEVELOPED LAST WINTER COULD PRESUMABLY BE EMPLOYED BY ALLIES WITHOUT MODIFICATION. KLEIN

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